IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITIONS 214, 215, 216, 217 OF 1993.

WRIT PETITION NO.214/1993.

Shamrao Shripat Tamgade,
Aged 48 years, occupation Serviceman
as Assistant Superintendent,
High Court, Bench at Aurangabad. ....
Petitioner.

Versus

1. The State of Maharashtra.

2. The Hon'ble Lordship Chief
Justice, high Court of
Judicature of Bombay at Bombay.

3. The Registrar,
High Court, Appellate Side,
Bombay – 32.

4. The Additional Registrar,
High Court, A. S., Bombay.

5. The Additional Registrar,
High Court, Bench at
Aurangabad.

6. Keshaorao Pandharinath-
Kshirsagar, Aged 54 years,
Occ. Govt. Service as Deputy
Registrar, High Court,
Bench at Aurangabad.

7. Sumant Garesh Deshmukh,
Aged 56 years, Occ. Govt. Service,
as Assistant Registrar,
High Court, Bench at
Aurangabad.

8. Gunderao Ramrao Wagadalkar
   Aged 56 years, Occ.Govt. Service,
   as Assistant Registrar,
   High Court, Bench at Aurangabad.

9. Babaji Devji Pardale,
   Aged 48 years, Occ. Govt. Service,
   as Senior Superintendent,
   High Court, Bench at
   Aurangabad.

10. Shriram Bapu More,
    Aged 39 years, Occ. Service
    as Senior Superintendent,
    High Court, Bench at
    Aurangabad.

11. Ratnakar Laxman Kendhe,
    Aged 32 years, Occ. Service as
    Superintendent, High Court,
    Bench at Aurangabad.

12. Zisuddin Abdul Rehman Kazi,
    Aged 34 years, Occ. Govt. Service,
    as Superintendent, High Court,
    Bench at Aurangabad.

13. Arun Ambadasrao Deshmukh,
    Aged 32 years, Occ. Govt.
    service as Superintendent,
    High Court, Bench at Aurangabad.

14. Prakash Ramchandra Shinde,
    Aged 29 years, Occ. Govt. Service,
    as Superintendent, High Court,
    Bench at Aurangabad.

15. Shrinivas Dhondiraj Dhongade,
    Aged 26 years, Occ. Govt. Service
    as Superintendent, high Court,
    Bench at Aurangabad.

16. Ambadas Wasudeo Dharmadhikari,
    Aged 56 years, Occ. Govt. Service

as Senior Superintendent,
High Court, Bench at Aurangabad.

17. Dashrath Abaji Khabade,
Aged 51 years, Occ. Govt. Service
as Superintendent, High Court,
Bench at Aurangabad.

18. Khaja Mohinddin Mohd. Alluddin,
Aged 52 years, Occ. Govt. Service
as Superintendent, High Court,
Bench at Aurangabad. .... Respondents.

WRIT PETITION NO.215/1993

Dasharath
S/o Aba Khabade,
Aged 55 years, Occ. Service,
R/o Aurangabad. ....
Petitioner.

Versus

1. The State of Maharashtra.

2. The Hon'ble Chief Justice,
High Court of Judicature of
Bombay at Bombay.

3. The Registrar,
High Court of Judicature of
Bombay at Bombay, Appellate
Side, Bombay.

4. The Additional Registrar,
High Court of Judicature of
Bombay, Appellate Side,
Bombay.

5. The Additional Registrar,
High Court of Judicature of

Bombay, Bench at Aurangabad.

6. Mr P. B. Pardale,

7. Mr. S. B. More,

8. Mr. R. L. Kendhe.

9. Mr. Z. A. Kazi.

10. Mr. A. A. Deshmukh.

11. Mr. P. R. Shinde.

12. Mr. P. Y. Gorwadkar

Respondents Nos.6 to 12
all age major, Occ. Service,
High Court of Judicature of
Bombay, Bench at Aurangabad. .... Respondents.

WRIT PETITION NO.216/1993

Annasaheb
S/o Govindrao Randive,
Aged 49 years, Occ. Service,
R/o Ahmedpur, Dist. Latur. .... Petitioner.

Versus

1. The State of Maharashtra.

2. The District and Sessions Judge,
Latur.

3. Shri L.M. Chikhalikar,
Asstt. Superintendent,
C/o Civil Judge, Senior Division,
Latur.

4. Shri M. D. Tompe,

Asst. Superintendent,
C/o Civil Judge (Jr. Divn.),
Udgir. Dist. Latur. .... Respondents.

WRIT PETITION NO.217/1993

Nivrati Vithalrao Kamble,
age 31 years, occup: Senior Clerk
in the Court of the
Additional District Judge,
Hingoli, Dist.: Parbhani. ....
Petitioner.

Versus

1. The State of Maharashtra.
   (Through Secretary Law and Judiciary
   Department,
   Sachiwalaya, Bombay)

2. The Hon'ble Chief Justice,
   High Court of Judicature
   of Bombay at Bombay.

3. The Registrar,
   High Court of Judicature
   of Bombay,
   Appellate Side,
   Bombay.

4. District & Sessions Judge,
   Parbhani. .... Respondents.

Mr. Vikram Pai for petitioner in Writ Petition No.214 of 1993.

Mr. S.D. Rupwate for petitioner in Writ Petition No.217 of 1993.

Petitioner in person appeared in Writ Petition No.215 of 1993.

Petitioner in person appeared in Writ Petition No.216 of 1993.

Mr. R. M. Sawant, Government Pleader for Respondents.

CORAM: DR. S. RADHAKRISHNAN, J.
D. K. DESHMUKH, J.
S. J. VAZIFDAR, J.

DATE OF RESERVING THE JUDGMENT: 12th JULY, 2006.

DATE OF PRONOUNCING THE JUDMENT: 22nd SEPTEMBER, 2006.

ORAL JUDGMENT: (Per Dr. S. Radhakrishnan, J.)

1. The Petitioner-Shamrao Shripat Tamgade (Writ Petition No.214 of 1993, after passing the S.S.C. Examination in 1958 was initially appointed as an English Section Writer in the Court of the District Judge, Chandrapur, on June 18, 1960. He was promoted as a Clerk thereafter in the Mofussil Judiciary. In 1978, he was temporarily promoted as a Senior Clerk for some time and was again reverted as a Junior Clerk. On passing the Lower Standard Departmental Examination in 1972, he joined the Aurangabad Bench of the High Court in 1981. He worked

as Assistant Superintendent from December 12, 1983, upto December 1, 1986. He was appointed as the Superintendent on and from September 1, 1987 and as Senior Superintendent on and from March 16, 1990. By this petition, he is seeking further promotions in the reserved category.

2. The petitioner – Dashrath Aba Khabade, (in Writ Petition No.215 of 1993) obtained his graduation (B.A.) in 1964, post-graduation (M.A.) in 1969 and he passed the Lower Standard Departmental Examination and the High Standard Departmental Examination in 1971. He was appointed in the Mofussil Judiciary on June 26, 1962. It is his case that on and from February 1, 1981, on attaining of 45 years, he was exempted from appearing for the examination of the Mofussil Judiciary. He was appointed as an Assistant Superintendent, on the establishment of the Aurangabad Bench from August 24, 1981 and he was promoted as a Superintendent on and from October 24, 1986. He also seeks promotion in the reserved category.

3. The Petitioner – Annasaheb Govndrao Randive (Writ Petition No. 216 of 1993) belongs to the reserved category of

Scheduled Caste. He is an ex-serviceman. He was appointed as Junior Clerk in the District Court, Latur on 29th January, 1969, at Ahmedpur and thereafter, has been transferred time to time to various places. At present, the Petitioner is working in the District Court at Latur. He seeks promotion to the post of Assistant Superintendent, in the reserved category.

4. The Petitioner – Nivrutti Vithalrao Kamble (Writ Petition No.217 of 1993) joined as a Clerk in the District Court, Parbhani on October 8, 1981. By impugned order (Exhibit F page 39), the Learned District Judge, Parbhani (Respondent No.4) rejected the Application of the present Petitioner for promotion to the post of Assistant Superintendent in the reserved category. The Petitioner belongs to Mahar Community, is a Scheduled Caste and therefore, has prayed for quashing and setting aside the directions issued by Respondent No.4 dated April 26, 1988. Additionally, Petitioner has prayed for necessary orders and directions to Respondent No.4 to promote the Petitioner to the post of Assistant Superintendent in the reserved category.

5. The above Writ Petitions 214, 215, 216 and 217 of 1993 have been transferred from Aurangabad Bench to Bombay High Court, for final hearing.

6. Writ Petitions 214, 215 and 217 of 1993 filed at Aurangabad were earlier disposed of by Division Bench on 8th June 1992, which held that the petitioners were entitled to the reliefs claimed as per the policy of reservation. The Registrar of the High Court filed review petition for the review of the said Division Bench judgment, and finally those review petitions were heard at Bombay by a Division Bench in September 1992. The Court, after a detailed reasoning recalled the Division Bench judgment dated 8th June, 1992, declared it as non-est and also directed that the writ petitions be heard afresh. Aggrieved thereby, a Special Leave Petition was filed in the Supreme Court, wherein leave was granted, and later in Civil Appeal No.5333 of 1993, by its judgment and order dated 11th September 2002, the Supreme Court found no infirmity in the judgment reviewing and recalling the earlier judgment. The Registry was therefore directed to place the papers before the Hon'ble Chief Justice for further directions as to hearing of the said writ petitions. Thereafter,

on the directions of the Hon'ble Chief Justice, this Full Bench was constituted to hear the abovementioned petitions.

7. Mr. Rupwate appeared for the Petitioner in Writ Petition No.217 of 1993. Mr. Vikram Pai appeared for the Petitioner in Writ Petition No. 214 of 1993. The Petitioners in Writ Petition Nos.215 and 216 of 1993, appeared in person and adopted the arguments of Mr. Rupwate and Mr. Pai. Mr. R. M. Sawant, Govt Pleader appeared for the Respondents in the above Petitions.

8. It was contended by Mr. Rupwate for the Petitioner that Respondent State, had by a Resolution dated 22nd February 1971 modified the erstwhile recruitment rules and issued revised recruitment Rules for the recruitment of Class III and Class IV services in the subordinate judicial services. Rule 6(c) of the said Rules framed by the State of Maharashtra specifically mandates that,

> " the selection shall be made in such a manner that, as far as possible at any particular time, a sufficient number of backward class candidates shall always be

available for appointment so as to satisfy the percentage prescribed for the purpose by the government from time to time. ”

9. The said Rule came into operation at once. It was contended that till date, Rule 6(c) has not been implemented nor operated by Respondents No.2-4 especially in the matter of promotions. In support of this contention, Mr. Rupwate relied on the judgment of ***Indra Sawhney v. Union of India,*** reported in *AIR 1993 SC 447,* wherein the Hon'ble Supreme Court has observed that the provision for reservation in favour of backward classes need not be made by the Parliament or the Legislature and thus can also be made by the Executive wing of the Union/State.

10. It was contended by Mr. Rupwate that Respondents no.2-4, being the Chief Justice, Registrar and Additional Registrar, despite specific mandatory provision of Rule 6(c) of the aforesaid Rules discarded it and gave it a total go-by, contrary to the provisions of the Constitution of India, particularly Articles 15(4), 16(4), 46 and 335. The Learned Counsel emphasized that the Chief Justice must frame Rules

under Article 229 of the Constitution of India, to provide for reservation in the matter of promotion.

11. It was contended that the petitioners had made a representation for post of Superintendent according to the 50 Point Roster System of reservation. However, Respondent No.4 refused to consider this application. Subsequently, two applications were made to Respondent No.4 seeking promotion as per policy of reservation provided by the State Maharashtra. As no reply was given by Respondents No.2-4, the above Petitions were filed seeking promotion.

12. It was contended by Mr. Rupwate that the percentage of Scheduled Castes, Scheduled Tribes and Other Backward Classes is specifically prescribed in a series of Government Resolutions and those Resolutions are to be read in consonance with provisions of Rule 6(c) of the aforesaid 1971 Rules. Mr. Rupwate contended that the Respondents No.2-4 are duty bound to implement policy of reservation as per the letter of the law; and merely implementing policy of reservation in spirit cannot be justification for not obtaining

prescribed percentage of reservation. It was contended that High Court would be 'State' within Article 12, when it comes to the staff of High Court, it would be the prerogative of the Hon'ble Chief Justice to comply with reservations as provided by the State of Maharashtra. In view of this, it was contended that a writ of mandamus, or any other appropriate writ, order, and/or direction under Article 226 of the Constitution can be issued against Respondents No.2-4 for strict adherence to provision of Rule 6(c) and for recruiting prescribed percentage of candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes in services of subordinate judiciary.

13. It was further argued by Mr. Rupwate that other District and Sessions Courts within the State of Maharashtra do not observe policy of reservation, flouting Rule 6(c), thus the anomaly of implementation of the Rules should be rectified by this Court by issuing appropriate writ/order directing Respondents 2 to 4 for providing reservation, as per State Government policy.

14. Reliance was also placed by Mr. Rupwate on ***H.C.***

Puttaswamy & others v. Hon'ble Chief Justice of Karnataka and others, AIR 1991 SC 295, wherein it had been held that the Rules made under Article 229(1) & (2) of the Constitution of India must be observed and appointments made by the Chief Justice contrary to Rules are not proper.

15. The learned counsel for the Petitioner Mr. Rupwate contended that the decisions and actions of the Hon'ble Chief Justice on the administrative side of the High Court are justiciable and subject to the scrutiny by this Court under Article 226 of the Constitution of India. Mr. Rupwate stated that Article 229 of the Constitution of India does not make the High Court an isolated entity and the Rules framed by the Hon'ble Chief Justice were subject to law made by the State Legislature.

16. It was further contended that the SC, ST, and OBCs are not adequately represented in the services of the High Court and the subordinate courts in Class I-IV posts and it would thus be appropriate to issue directions for implementation of the policy of reservations promulgated by Respondent No.1-State of Maharashtra and that the same be observed by

Respondents No2-4.

17. Mr. Vikram Pai, the learned counsel for the Petitioner contended that the reservation of posts for recruitment as well as for promotion should be as per Rules which are required to be made applicable by the Hon'ble Chief Justice while exercising the powers under Art. 229 of the Constitution of India, having regard to embodying principles laid down in Articles 15(4), 16(4) and also to keep in mind the Directive Principles of State Policy. With regard to the staff of High Court, it is contended that it is desirable that it should follow the policy of reservation of the State Government in this regard.

18. It was further contended by Mr. Pai that according to the Rules framed by the Hon'ble Chief Justice under powers conferred to him under Article 229 of the Constitution of India, Rule 9 provided for making appointments with preference to candidates coming from backward classes in order to make percentage prescribed by government for such classes. For this purpose, such a candidate could be appointed out of turn in the common list. Mr. Pai pointed out that there are no rules framed by the Chief Justice

providing for reservation in the matter of promotion.

19. Lastly, it was contended by Mr. Pai that it was obligatory on the part of the Hon'ble Chief Justice to follow the policy of the State of Maharashtra with regard to reservations.

20. In all the above Petitions, the petitioners have collectively prayed as under :

> I. Petitioners have prayed that a writ of mandamus or any other appropriate writ, order or direction in the nature of a writ of mandamus directing the Respondents No.2-5 to adopt the Roster maintained by Respondent No.1 State, in matter of recruitment and promotion, thereby provide reservations.
>
> II. That a writ of mandamus be

issued directing Respondents No.2-5 to make reservations for backward classes in matter or recruitment and promotion in the High Court and to adopt a policy of reservation published by Respondent No.1 State, as per Rule 6(c) framed by the State of Maharashtra, under Article 309 of the Constitution of India.

III. It was also prayed for a declaration that the power of Respondent No.2, the Hon'ble Chief Justice under Article 229 (2) of the Constitution of India to be arbitrary and violative of Articles14 and 16 of the Constitution of India, with respect to prescribing conditions of service of the officers and servants of the

High Court.

21. The learned Government Pleader for the Respondents submitted that no writ of Mandamus would lie against the Hon'ble Chief Justice to frame Rules under Article 229 of the Constitution of India to provide for reservation in promotion. He also strongly contended that Articles 15 and 16 of the Constitution of India are enabling provisions for providing reservations but no one can compel and enforce the same. Mr. Sawant, the Learned Government Pleader, also strongly relied on a Division Bench Judgment dated 7.9.2004 of Aurangabad Bench, on the very same issue of seeking a Writ of Mandamus against the Chief Justice, directing him to frame rules under Article 229 of the Constitution of India, to provide for Reservation for the employees in the High Court, especially for promotion in the case of ***Bahujan Hitaya Nyayalayeen Karmachari Mahasangha v/s State of Maharashtra & others (Writ Petition No.2149 of 1995).*** The Division Bench categorically held that no such Writ can be issued to provide for such a reservation, either in appointment or in promotion.

22. From a perusal of the arguments advanced by the

learned Counsel, two main questions arise before this Court:

I. Whether a writ of mandamus can be issued directing the Hon'ble Chief Justice of the High Court in exercise of powers under Article 229 of the Constitution of India to legislate or frame rules to provide reservations in the recruitment and promotion of officers and servants of the High Court, keeping the interests of SCs, STs and OBCs in mind ?

II. Can a member of SC, ST or OBC approach this Court by an appropriate Writ Petition under Article 226 of the Constitution of India to give effect to reservation policy of the government in consonance with Articles 15(4) and 16(4) of the Constitution of India, i.e. whether Articles 15(4) and 16(4) of the Constitution of

India are enforceable ?

23. Let us examine the nature and extent of the power of the Chief Justice under Article 229 of the Constitution of India. The scope of the power of the Chief Justice is clearly elucidated in a number of judgments, a few of which we will reproduce here, in order to examine the exact extent of the Rule Making power conferred by the Constitution of India. It is a well-established principle that the object underlying Article 229 of the Constitution of India is to ensure the independence of the High Court. The limited extent of review available to the High Court is in as much as to test the validity and constitutionality of the rules framed by the Chief Justice. In ***Puttaswamy v. Hon'ble Chief Justice of Karnataka AIR 1991 SC 295 at page 298, 299,*** the Supreme Court in paragraph 11 says,

> *" The object of this Article was to secure the independence of the High Court which cannot be regarded as fully secured unless the authority to appoint supporting staff with complete control over them is vested in the Chief Justice. There can be no*

disagreement on this matter".

> *"There is imperative need for total and absolute administrative independence of the High Court. But the Chief Justice or any other administrative judge is not an absolute ruler nor is he a free wheeler. He must operate in the clean world of law, not in the neighbourhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by the same principles and values as those of the Court he' serving. He cannot depart from and indeed must remain committed to the constitutional ethos and traditions of his calling. We need hardly say that those who are expected to oversee the conduct of others must necessarily maintain a higher standard of ethical and intellectual rectitude. The public* expectations *do not seem to be less exacting "*

It is vital to note here that in the above case, the Chief Justice had not adhered to the Rules framed by him under Article 229 of the Constitution of India. Whereas in the present Petitions with which we are concerned, Petitioners are

seeking a Writ of Mandamus that Chief Justice should be directed to frame rules under Article 229 of the Constitution of India, to provide for reservations in the matter of promotion.

24. Hence the power of the Chief Justice is neither absolute nor unfettered. However no court under Article 226 of the Constitution of India has the power to direct the Chief Justice to frame or formulate rules or make appointments for a particular purpose since that would mean impinging on the discretion of the Chief Justice. In other words although the court has every power to examine the constitutional validity of rules framed under Article 229 of the Constitution of India, but it cannot issue directives to the Chief Justice to frame rules for the benefit of a certain section of society. To put it in other words, no Writ of Mandamus would lie against the Chief Justice to legislate rules under Article 229 fo the Constitution of India.

25. At this juncture it would be necessary to quote the case of ***High Court of Judicature of Rajasthan v. Ramesh Chand Paliwal AIR 1998 SC 1079,*** wherein a question arose as to

whether a full court can give a direction to the Chief Justice not to fill up certain posts by bringing officers on deputation but to fill up these posts by promotion from amongst the High Court staff. The Hon'ble Supreme Court answered the question in the negative, in paragraph 32 on page 1086,

" *A judge of the High Court individually or all the judges sitting collectively, as in the Full Court, cannot either alter the constitutional provisions or the rules made by the Chief Justice. They have no jurisdiction even to suggest any constitutional amendment or amendment in the rules made by Chief Justice nor can they create any avenue of promotion for the High Court staff so as to be appointed on posts meant for officers from Rajasthan Higher Judicial Service or Rajasthan Judicial Service. The Chief Justice has been vested with wide powers to run the High Court administration independently so as not to brook any interference from any quarter, not even from his brother judges who, however can' t scrutinize his administrative action or order on the Judicial side like the action of any other authority.* "

26. Therefore this court cannot issue a directive in the nature of a command by way of a Writ of Mandamus to legislate to frame rules for the Scheduled Castes, Scheduled Tribes and

Backward Classes reservations. That would be the prerogative of the legislature itself or the Chief Justice and the court has no say in that regard. The same has been in the case of *Indra Sawheney v. UOI AIR 1993 SC 477 at page 620 (para 300),*

" The action of the government in making provisions for the reservation of appointments or posts in favour of any 'backward class of citizens' is a matter of policy of the government. What is best for the 'backward class' and in what manner the policy should be formulated and implemented bearing in mind the object to be achieved by such reservation is a matter for decision exclusively within the province of the government and such matters do not ordinarily attract the power of judicial review or judicial interference except on the grounds which are well settled by a cantena of decisions of the Supreme Court."

Hence such Writ of Mandamus cannot be issued to the Chief Justice to frame rules to provide for reservation in the promotion of High Court Employees. The Hon'ble Chief Justice exercises legislative powers while making rules for recruitment etc. Hence the answer to the first question is in the negative.

27. Coming to the second question of whether Article 15 (4) and 16(4) of the Constitution of India are enforceable, it is a well settled position of law that Article 15(4) and 16(4) of the Constitution of India are only enabling provisions and no individual can claim enforcement of the same.

28. In the case of ***C.A. Rajendran v. UOI AIR 1968 SC 507 at 513*** in paragraph 7, the Supreme Court has held,

" Our conclusion therefore is that Article 16(4) does not confer any right on the petitioner and there is no Constitutional duty imposed on the Government to make a reservation of Scheduled Castes, Scheduled Tribes, either at the initial stage of recruitment or at the stage of promotion. In other words Article 16(4) is an enabling provision and confers a discretionary power on the state to make a reservation of appointments in favour of Backward Classes of citizens which in its opinion is not adequately represented in the service of the state. "

Hence it becomes clear that Articles 15(4), and 16(4) of the Constitution of India are just enabling provisions. Therefore a writ in the nature of Mandamus cannot lie against them. In ***Union of India v. R. Rajeshwaran & Anr. (2003) 9 SCC 294***, the

Supreme Court again reiterates, ***"In Ajit Singh (II) v. State of Punjab (1999) 7 SCC 209, this court held that Article 16(4) of the Constitution confers a discretion and does not create any constitutional duty and obligation. "***

29. Hence the answer to the second question is also in the negative.

30. Under the aforesaid facts and circumstances, we do not find any merit in the above Petitions. Hence Rule stands discharged in all the above four Petitions, however with no order as to costs.

Issuance of certified copy expedited.

(DR. S. RADHAKRISHNAN, J.)

(D. K. DESHMUKH, J.)

(S. J. VAZIFDAR, J.)